

1 The Honorable Tana Lin  
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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

9 STATE OF WASHINGTON, et al.,

10 PLAINTIFFS,

11 v.

12 U.S. DEPARTMENT OF  
TRANSPORTATION, et al.,

13 DEFENDANTS.

14 NO. 2:25-cv-00848-TL

15 PLAINTIFFS' REPLY IN SUPPORT OF  
MOTION FOR PRELIMINARY  
INJUNCTION

16 NOTE ON MOTION CALENDAR:  
JUNE 4, 2025

17 ORAL ARGUMENT SET FOR  
JUNE 17, 2025, 2PM

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## I. INTRODUCTION

Defendants categorically halted the NEVI Formula Program, thereby causing immediate and irreparable harm to Plaintiff States. Defendants do not dispute the operative facts. Instead, they spend most of their response defending their authority to revise agency guidance, authority Plaintiffs never challenged. This straw-man argument dodges the point: Defendants cannot revoke previously approved State Plans, and they lack authority to categorically prohibit new obligations of funds. Defendants took final agency action that irreparably harms Plaintiffs, in clear violation of statutory law and separation-of-powers principles, and the Court should grant Plaintiffs' preliminary injunction.

## II. ARGUMENT

## A. Plaintiffs Are Likely to Succeed on the Merits

## 1. Plaintiffs' claims are ripe

Plaintiffs' claims are ripe. The ripeness doctrine exists to prevent courts "from entangling themselves in abstract disagreements over administrative policies," to "protect agencies from judicial interference until an administrative decision has been formalized," and to avoid such judicial review until "its effects [are] felt in a concrete way by the challenging parties." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967), abrogated on other grounds by *Califano v. Sanders*, 430 U.S. 99 (1977). Here, the issues presented are "definite and concrete, not hypothetical or abstract." *Bishop Paiute Tribe v. Inyo County*, 863 F.3d 1144, 1153 (9th Cir. 2017). Likewise, the issues are "fit[] . . . for judicial decision," and "withholding court consideration" would cause "hardship" to Plaintiffs. *Id.* at 1154.

Defendants characterize Plaintiffs' claims as unripe because Defendants purportedly are "working diligently to publish revised guidance," and because, according to them, Plaintiffs' injuries are theoretical until the point Defendants define the funds as obligated. *See* Dkt. #93 p.9. Those arguments, however, just repackage Defendants' later contentions on finality and irreparable harm.

1       In APA preliminary injunction cases, ripeness is often inter-related with the analyses of  
 2 final agency action and irreparable harm. *See Washington v. DeVos*, 466 F. Supp, 3d 1151,  
 3 1162 (E.D. Wash. 2020) (citing *Northcoast Envtl. Ctr. v. Glickman*, 136 F.3d 660, 668 (9th  
 4 Cir. 1998)). “[A]n agency’s characterization of its actions as being provisional or advisory is  
 5 not necessarily dispositive” of such questions. *Id.* (quoting *Columbia Riverkeeper v. U.S. Coast  
 6 Guard*, 761 F.3d 1084, 1094-95 (9th Cir. 2014)). Rather, the court should “consider the  
 7 practical effects” of an agency’s decision “regardless of how it is labeled.” *Id.* Where “further  
 8 factual development” would not “significantly advance [the court’s] ability to deal with the  
 9 legal issues presented,” challenge to a final agency action is ripe. *Nat’l Park Hosp. Ass’n v.  
 10 Dep’t of Interior*, 538 U.S. 803, 812 (2003).

11       Here, the practical effect of Defendants’ actions is to halt the NEVI program. Plaintiffs  
 12 cannot move forward with previously approved State Plans because, as Defendants admit, they  
 13 have revoked those Plans and refuse to obligate any additional funds under them. The injury  
 14 caused by those actions is immediate, concrete, and irreparable. Moreover, Defendants’ lack of  
 15 authority to act as it has is a purely legal issue, and no further factual development is required  
 16 to assess it. Whatever revised guidance may be issued in the future has nothing to do with the  
 17 illegal actions before the Court now. Ripeness poses no bar to this Court’s review.<sup>1</sup>

18       **2. Defendants took final agency action**

19       Plaintiffs’ APA claims challenge specific agency actions announced in the FHWA  
 20 Letter: The revocation of approved State Plans and the categorical withholding of NEVI  
 21 funds from obligation. Dkt. #93 p.9. Defendants attack a straw-man when they repeatedly assert  
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23       <sup>1</sup> Defendants attempt to claim high ground because they have not “withheld funds”  
 24 under “legally binding agreements that contractually commit FHWA to reimburse states for  
 25 eligible expenses.” *See* Dkt. #93 p.10, n.1. They passingly claim that, had they done so,  
 26 jurisdiction over such issues would rest with the Court of Federal Claims pursuant to the  
 Tucker Act. Defendants’ footnote is a tacit admission that this case does not involve Tucker  
 Act claims, but APA claims regarding the “ongoing relationship between the parties.” *Bowen  
 v. Massachusetts*, 487 U.S. 879, 905 (1988).

1 that Plaintiffs target Defendants' decision to review and update the NEVI guidance. Dkt. #93  
 2 p.10.

3 Defendants' revocation of State Plans and categorical withholding of NEVI funds from  
 4 obligation "mark the consummation of the agency's decisionmaking process." *Bennett v.*  
 5 *Spear*, 520 U.S. 154, 177-78 (1997). Courts distinguish between actions that "merely begin" a  
 6 review process "that could culminate in no change to the rule," and "interim" actions that  
 7 impose immediate consequences, the latter being final agency actions. *Clean Air Council v.*  
 8 *Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2017) (decision to stay, pending reconsideration, portions of  
 9 rule was final action); *see also United Mine Workers of Am. v. Mine Safety & Health Admin.*,  
 10 823 F.2d 608, 614-15 & n.5 (D.C. Cir. 1987) (interim relief from a safety standard was final  
 11 action); *Doe v. Trump*, 288 F. Supp. 3d 1045, 1069-70 (W.D. Wash. 2017) (memo suspending  
 12 refugees from entering the United States was final action). Defendants' guidance revisions are  
 13 inapposite—courts regularly reject agency attempts to insulate themselves from review by  
 14 characterizing actions as "temporary" and subject to change in the future. *See Prutehi*  
 15 *Litekyan: Save Ritidian v. U.S. Dep't of Airforce*, 128 F.4th 1089, 1109 (9th Cir. 2025); *see*  
 16 *also Doctors for America v. Off. of Personnel Mgmt.*, 766 F. Supp. 3d. 39, 51 (D.D.C. 2025).  
 17 Courts have applied that principle to rebuff many recent attempts to avoid judicial review by  
 18 portraying agency funding actions as inseparable from an ongoing evaluative process. *See, e.g.*,  
 19 *Pacito v. Trump*, No. 2:25- cv-255-JNW, 2025 WL 655075, at \*16 (W.D. Wash. Feb. 28,  
 20 2025) ("[T]hat the challenged [funding freeze] actions are ostensibly temporary is  
 21 immaterial."); *Woonasquatucket River Watershed Council v. USDA*, No. 1:25-cv-00097-MSM-  
 22 PAS, 2025 WL 1116157, at \*15 (D.R.I. Apr. 15, 2025) ("[T]here are no further steps the  
 23 agencies need to take to determine whether they will freeze that funding."); *AIDS Vaccine*  
 24 *Advocacy Coal. v. U.S. Dep't of State*, 766 F. Supp. 3d 74, 82 (D.D.C. 2025) (funding  
 25 suspension was final action). Here, Defendants did even more than institute an allegedly  
 26 temporary funding freeze—they revoked Plaintiffs' State Plans with no prospect of revisiting

1 that decision or resurrecting the Plans. Instead, Plaintiffs will need to submit new State Plans  
 2 for approval. FHWA Letter at 2. Similarly, the suspension of the NEVI Program and  
 3 withholding of funds is a final decision “effective immediately” that will remain in place until  
 4 Defendants take new, distinct action—i.e., until new guidance is issued, and new State Plans  
 5 are submitted and approved. *Id.*

6 Defendants’ actions also determine “rights or obligations” “from which legal  
 7 consequences will flow.” *Bennett*, 520 U.S. at 177-78. Plaintiffs cannot obligate and draw  
 8 down further funds—a prerequisite to proceeding with construction activities—due to  
 9 Defendants’ actions. Dkt. #5 p.9. The FHWA Letter states that “no new obligations may  
 10 occur,” and Defendants further admit that Plaintiffs may not even submit requests to obligate.  
 11 FHWA Letter at 2; Dkt. #93 pp.5, 12. Even though FHWA must approve obligation requests,  
 12 Defendants’ actions have had “a direct and immediate effect on the day-to-day operation[s]” of  
 13 Plaintiffs, impeding their ability to advance EV projects and to administer entire state  
 14 programs. *Oregon Nat. Desert Ass’n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir. 2006)  
 15 (citations omitted); Dkt. #5 pp.9, 20-22.

16 **3. Defendants’ actions are in excess of statutory authority and contrary to law**

17 Defendants identify no statutory authority to revoke State Plans or to categorically refuse  
 18 to obligate NEVI funds. Instead, they claim a series of implicit authorities. Defendants claim  
 19 they have implicit authority to “revoke and update” guidance. Dkt. #93 p.13. Upon that narrow  
 20 reed, Defendants then claim two much broader powers that have no basis in the statute. First,  
 21 they contend that their authority to develop guidance also confers upon them implicit authority  
 22 to “suspend” previously approved State Plans. Dkt. #93 p.14. Second, they go a step further and  
 23 assert that “their statutory authority to control Program guidance” implies an authority to  
 24 withhold funds from obligation. Dkt. #93 p.15. Defendants’ positions are in sharp tension with  
 25 the clear language of the IIJA, and they claim powers Congress did not convey.

a. Defendants lack statutory authority to retroactively revoke State Plans or withhold funds for reasons not set forth in the IIJA

So long as States timely submit their State Plans, the IIJA entitles them to their share of NEVI funding for a given fiscal year. *See* Dkt. #93 pp.10-11; Pub. L. No. 117-58, 135 Stat. 429, 1422 (2021). The Government Accountability Office (GAO), a nonpartisan congressional watchdog agency, recently found that the “IIJA constitutes a mandate to provide amounts appropriated for the NEVI Formula Program to the [S]tates.” Supp. Brown Decl. Ex. 1, p.17. As the GAO explained, the IIJA limits FHWA’s authority to withhold or withdraw NEVI funds to two narrow situations: (1) when a State fails to submit a plan by the deadline, or (2) “if the Secretary determines that a state has not taken action to carry out its plan.” *Id.* p.6; *see also* Dkt. #5 pp.10-11. Neither scenario applies here.

Defendants rest their argument entirely on their authority to promulgate initial guidance. *See* Dkt. #93 pp.14-15 (referencing 135 Stat. at 1423). But that limited authority does not give them discretion to revoke State Plans or to withhold funds from obligation in direct contravention of the statute. Congress expressly carved out the limited circumstances in which Defendants are authorized to withhold NEVI funds. This confirms that States are entitled to such funds once apportioned unless one of the two scenarios enumerated in the IIJA is met. *See* Supp. Brown Decl. Ex. 1 p.16 (“[U]nless the Secretary invokes the authority in IIJA to withhold or withdraw funds therefor, such funds are directed by IIJA to the states.”). Those explicit statutory terms limit the Agency’s authority, and none of the implicit authority claimed by Defendants can override Congressional direction. *See Ivy Sports Medicine, LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014) (Kavanaugh, J.) (“[W]e have [] recognized that any inherent reconsideration authority does not apply in cases where Congress has spoken.”); *New Jersey v. E.P.A.*, 517 F.3d 574, 583 (2008) (“Congress … undoubtedly can limit an agency’s discretion to reverse itself.”).

Finally, Defendants argue that they must be able to “briefly suspend State plans” pending the issuance of “routinely updated” guidance. Dkt. #93 p.15. Again, that has no basis in the statute. Even if it did, the “suspension” here is neither routine nor brief. The President directed Defendants to “immediately pause the disbursement of funds . . . made available through the [NEVI] Formula Program.” Exec. Order No. 14,154, 90 Fed. Reg. 8353, 8357 (Jan. 20, 2025). And far from “brief,” the “suspension” will last until after Defendants publish draft guidance, through a public comment period of unspecified length, the time to issue final guidance, and the additional time needed to prepare and approve new State Plans. *Id.*

**b. Defendants lack discretionary authority to revoke State Plans**

The IIJA bestows only ministerial approval authority to ensure State Plans are “in such form and in such manner” as the Secretary requires. 135 Stat. at 1422. This statutory language merely “authorizes the Secretary to dictate the information included in the plan and the deadline for submission.” Supp. Brown Decl. Ex. 1 p.10. It does not give Defendants license to withhold NEVI funds when State Plans have been properly and timely submitted, or to otherwise exercise discretionary approval authority. *See id.* (“IIJA does not include a discretionary approval provision”). It certainly does not authorize the categorical revocation of all State Plans.

Defendants misread 23 U.S.C. § 106(a), which they contend “vests the Secretary with such discretion by expressly requiring the agency’s approval of the States’ plans.” Dkt. #93 p.20. Section 106(a) states, “[e]xcept as otherwise provided in this section, each State transportation department shall submit to the Secretary for approval such plans, specifications, and estimates for each proposed project as the Secretary may require.” 23 U.S.C. § 106(a). “[P]lans, specifications, and estimates” refers to technical plans and other engineering details attached to a particular construction project, a term of art known as “PS&E.” *See* 23 C.F.R. § 630.205(b) (FHWA regulation requiring that “[p]lans and specifications” “describe the location and design features and the construction requirements in sufficient detail to facilitate

1 the construction, the contract control and the estimation of construction costs of the project");  
 2 e.g., O'Dea Declaration Ex. 1 (attaching PS&E for EV charging project to construction  
 3 authorization request). FHWA guidelines likewise define "Plans" as "instructions using  
 4 drawings containing engineering data or details pertaining to geometrics, drainage, structures,  
 5 soils and pavements and other appurtenances." Supp. Brown Decl. Ex. 2. Even if PS&E could  
 6 somehow include NEVI State Plans, Defendants have delegated approval responsibility over  
 7 PS&E to States. Section 106(c) allows States to "assume the responsibilities of the Secretary  
 8 under this title for design, plans, specifications, estimates, contract awards, and inspections  
 9 with respect to the projects. . . ." 23 U.S.C. § 106(c). All States have assumed responsibility for  
 10 approving PS&E for federal highway projects. Supp. Brown Decl. Ex. 3-4.

11 **4. Defendants' actions are arbitrary and capricious**

12 Defendants do not seriously dispute that their actions are arbitrary and capricious.  
 13 Dkt. #93 pp. 12-15. Their sole rationale—that new "policy and priorities" compel them to  
 14 update the guidance—fails. *Id.* p.5. Defendants lack authority to force States to conform their  
 15 approved State Plans to new guidance, Supp. Brown Decl. Ex. 1, so the guidance revision  
 16 cannot justify Defendants' decision to revoke State Plans and prohibit new obligations.  
 17 Additionally, Defendants nowhere explain why or how their new policies and priorities would  
 18 so alter State Plans that Defendants must revoke them and withhold funds. While Defendants  
 19 may revise the guidance to implement their priorities within statutory bounds, their actions  
 20 here—revoking all approved State Plans for all prior fiscal years and categorically withholding  
 21 apportioned funds from obligation—are unreasonably disproportionate to the explanation  
 22 provided.

23 Defendants also arbitrarily neglected to consider Plaintiffs' longstanding reliance  
 24 interests in approved State Plans and the faithful administration of the IIJA. Defendants' only  
 25 response is to claim they appropriately "balanced" these interests by allowing "previously  
 26 incurred obligations to proceed" while the NEVI program is suspended. Dkt. #93 p.15. But that

1 “balance” disregards altogether Plaintiffs’ reliance on unobligated—but statutorily mandated  
 2 and apportioned—funds. Plaintiffs rely on NEVI funds before obligation, as contemplated by  
 3 the statutory scheme, and as shown by Plaintiffs’ significant investment in developing State  
 4 Plans, running solicitations, and entering into binding awards based on the availability of those  
 5 funds. Dkt. #5 pp.13-14, 19-22. Defendants incorrectly assert that States may not enter into  
 6 agreements prior to FHWA authorizing obligations, Dkt. #93 p.11, when in fact, federal law  
 7 allows states to utilize an Advanced Construction process, under which eligible projects and  
 8 expenses are pre-approved so agencies can contract in reliance on federal funding, prior to  
 9 obligating funds. *See “Advance Construction of Federal-Aid Projects”* 73 Fed. Reg. 50194  
 10 (Aug. 26, 2008). Several Plaintiffs were in the process of executing or have executed contracts  
 11 for NEVI projects in reliance on their apportioned, but not yet obligated, funds. Collins-  
 12 Worachek Decl. ¶12; de Alba Decl. ¶10; Kelly Decl. ¶12; Toor Decl. ¶11. Yet Defendants  
 13 never claim to have considered these reliance interests before revoking State Plans and  
 14 prohibiting new obligations.

15 **5. Defendants acted “without observance of procedure required by law”**

16 Plaintiffs argue that Defendants violated the APA by failing to observe the procedures  
 17 required to withhold NEVI funds. Defendants fail to address this argument, thereby conceding  
 18 it. *See Fair v. King County*, No. 2:21-cv-01706-JHC, 2025 WL 1031274, at \*15 (W.D. Wash.  
 19 Apr. 7, 2025); *accord Jenkins v. County of Riverside*, 398 F.3d 1093, 1095 (9th Cir. 2005).

20 **6. Defendants violated separation-of-powers principles**

21 Defendants’ refusal to distribute congressionally appropriated NEVI funds to the States  
 22 violates separation-of-powers principles. Defendants distort Plaintiffs’ separation-of-powers  
 23 arguments and established caselaw by arguing that the Supreme Court precluded Plaintiffs’  
 24 constitutional claims in *Dalton v. Specter*, 511 U.S. 462 (1994). But the claim at issue in  
 25 *Dalton*—that the President *exceeded his statutory authority*—is entirely distinguishable from  
 26 this case, where Defendants *lack any authority* to refuse to spend congressionally appropriated

1 NEVI funds. *See City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1233-4 (9th Cir.  
 2 2018) (“[W]hen it comes to spending, the President has none of ‘his own constitutional  
 3 powers’ to ‘rely’ upon.”) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637  
 4 (1952)). Constitutional claims remain viable where, as here, “a plaintiff claims that the  
 5 President has ‘violat[ed] . . . constitutional separation of powers principles’ because the  
 6 President’s action lacked both ‘statutory authority’ and ‘background constitutional authority.’”  
 7 *Murphy Co. v. Biden*, 65 F.4th 1122, 1130 (9th Cir. 2023) (quoting *Sierra Club v. Trump*, 929  
 8 F.3d 670, 696–97 (9th Cir. 2019)). Indeed, numerous courts across the country have rejected  
 9 similar recent attempts by the Executive to misapply *Dalton*. *See, e.g., Am. Fed’n of Gov’t  
 10 Emps., v. Trump*, No. 25-cv-03698-SI, 2025 WL 1482511, at \*19 (N.D. Cal. May 22, 2025);  
 11 *Chicago Women in Trades v. Trump*, No. 25 C 2005, 2025 WL 1331743, at \*4–5 (N.D. Ill.  
 12 May 7, 2025).

13 Further, Defendants misstate Plaintiffs’ separation-of-powers claim by asserting that it  
 14 “seeks to enforce the Impoundment Control Act.” Dkt. #93 p.17. Not so. Well-settled,  
 15 controlling precedent makes clear that “[a]side from the power of veto, the President is without  
 16 [constitutional] authority to thwart congressional will by canceling appropriations passed by  
 17 Congress. Simply put, ‘the President does not have unilateral authority to refuse to spend []  
 18 funds.’” *City & Cnty. of San Francisco*, 897 F.3d at 1232 (quoting *In re Aiken County*, 725  
 19 F.3d 255, 261 n.1 (D.C. Cir. 2013)). Plaintiffs cite the Impoundment Control Act to emphasize  
 20 the extent to which Congress intentionally limited the ability of the President to withhold funds  
 21 and to further highlight that it is Congress, not the President, who has the power of the purse.  
 22 But Plaintiffs do not and need not rely on the Act for judicially enforceable rights. Dkt. #5  
 23 p. 17; Dkt. #93 p.17. Defendants cite no authority for the proposition that the Impoundment  
 24 Control Act somehow precludes separation-of-powers claims.

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1      **B. Plaintiffs Face Irreparable Harm Absent a Preliminary Injunction**

2      Against Plaintiffs' extensive evidence detailing irreparable harms to their EV  
 3      infrastructure programs' projects, operations, and policy goals, Defendants offer only legal  
 4      argument, not contrary evidence. Defendants' primary argument—that Plaintiffs' harm is  
 5      "economic" and therefore not irreparable, Dkt. #93 p.22—ignores controlling case law  
 6      recognizing economic injuries are irreparable where there is no means of recovering damages.  
 7      *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 677 (9th Cir. 2021) ("[W]here parties  
 8      cannot typically recover monetary damages flowing from their injury—as is often the case in  
 9      APA cases—economic harm can be considered irreparable."); *cf.* Dkt. #93 p.10, n.1  
 10     (acknowledging Plaintiffs do not raise contract claims for which damages are available). Thus,  
 11     even for economic injury, Plaintiffs have no remedy at law.

12       Defendants ignore all the intangible harms Plaintiffs identified, including delayed and  
 13     cancelled EV infrastructure projects, state agencies' operational confusion and budgetary  
 14     uncertainty, and industry partners refusing to participate in State-run solicitations. de Alba  
 15     ¶¶16-24; Kearns Decl. ¶¶25-26; Kelly Decl. ¶¶21-22; Meredith Decl. ¶¶37, 39-40; Pietz Decl.  
 16     ¶¶30-31; Pines Decl. ¶¶22-23; Ruder Decl. ¶¶11-15; *see also* O'Dea Decl. ¶¶6, 8. Federal  
 17     courts have found similar intangible harms to State programs caused by categorical and  
 18     indefinite federal funding freezes are irreparable, yet Defendants barely acknowledge those  
 19     harms. *See, e.g.*, *New York v. Trump*, No. 25-cv-39-JJM-PAS, 2025 WL 715621, at \*13-15  
 20     (D.R.I. Mar. 6, 2025); *Pacito*, 2025 WL 655075, at \*23. Such evidence of current, ongoing  
 21     harms also belies Defendants' claim that Plaintiffs cannot be harmed before FHWA declines to  
 22     obligate funds, *see supra*, Section II.A.1.

23       Defendants disregard Plaintiffs' evidence that NEVI funds are an irreplaceable majority  
 24     of several Plaintiffs' EV infrastructure programs, such that Defendants' actions halt EV  
 25     infrastructure expansion altogether. Collins-Woracheck Decl. ¶4, Patel Decl. ¶19, Pietz Decl.  
 26     ¶29. For all Plaintiffs, the costs of delay and increased administrative burden permanently

1 erode the share of Plaintiffs' NEVI allocations that can fund project construction. Dkt. #5  
 2 pp.21-22. Again, Defendants' dismissive characterization of such harm as "economic," Dkt.  
 3 #93 p.23, is inadequate: Because Plaintiffs "have no vehicle for recovery" of funds wasted on  
 4 accommodating Defendants' unlawful actions, that loss is irreparable. *East Bay Covenant*  
 5 *Sanctuary*, 993 F.3d at 677. Defendants' bald assertion that the "pause" is "temporary" does  
 6 not alter this fact, especially given the open-ended nature of the pause. The FHWA Letter  
 7 stated that Defendants "aim[ed]" to publish the draft guidance for comment "in the spring,"  
 8 FHWA Letter at 2, and Defendants' declaration offers even less assurance, Biondi Decl. ¶16.  
 9 See *New York v. Trump*, 2025 WL 715621, at \*13 (court "not reassured" by "vague promise"  
 10 that funding freeze "will end eventually").

11 As for Plaintiffs' reputational and sovereign harms, far from relying on "unsupported  
 12 speculation" or an "attenuated chain of possibilities," Dkt. #93 p.23, Plaintiffs have presented  
 13 concrete evidence of ongoing loss of industry confidence, including private partners and site  
 14 hosts dropping out of projects and state agencies suspending solicitations due to concerns over  
 15 fund availability. Dkt. #5 pp.20-21; *see also* O'Dea Decl. ¶6. And although the worst  
 16 "greenhouse gas pollution, air toxics inhaled, and unrealized job creation" may be yet to come,  
 17 Dkt. #93 p.23, Defendants' unlawful actions impede Plaintiffs' sovereign pursuit of their  
 18 environmental, health, transportation, and economic policies now—itself an irreparable harm.  
 19 Dkt. #5 p.18.

20 Finally, Plaintiffs did not "wait[] too long to seek preliminary relief." Dkt. #93 p.21.  
 21 Most of the cases Defendants cite involve plaintiffs who moved for injunctions years, not  
 22 weeks, after the challenged action. *Benisek v. Lamone*, 585 U.S. 155, 160 (2018) (six years);  
 23 *Oakland Tribune, Inc. v. Chronicle Publ'g Co.*, 762 F.2d 1374, 1375, 1377 (9th Cir. 1985)  
 24 ("many years"); *Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984)  
 25 ("five years"). Indeed, in *ARC of California v. Douglas*, the court rejected defendants' delay  
 26

1 argument where one statute challenged by plaintiffs “was passed *only months* before. . . .” 757  
 2 F.3d 975, 990 (9th Cir. 2014) (emphasis added).

3 Here, Plaintiffs filed suit—and immediately sought injunctive relief—only 37 days  
 4 after FHWA confirmed it had rejected California’s construction authorization request based on  
 5 the FHWA Letter. *See* Lam Decl. ¶¶10-11. Because “the magnitude of the potential harm  
 6 [became] apparent gradually,” it was “prudent” to file after confirming the effect of FHWA’s  
 7 unlawful actions. *Arc*, 745 F.2d at 990-91. As Defendants argue that Plaintiffs’ claims are still  
 8 not ripe, Dkt. #93 pp.7-10, Defendants’ accusations of delay ring particularly hollow.

9 **C. The Balance of Equities Favor an Injunction**

10 The balance of equities and public interest favor granting Plaintiffs’ motion. Plaintiffs’  
 11 requested injunction, by its terms, would not “disrupt” or impact at all Defendants’ “efforts to  
 12 finalize and promote NEVI guidance.” Dkt. #93 p.24. Plaintiffs do not contest Defendants’  
 13 ability to promulgate new guidance. What Defendants may not, and never could do, is revoke  
 14 approved State Plans to require States to conform their planned EV infrastructure projects to  
 15 that forthcoming guidance. *See supra*, Section II.A. Finally, Plaintiffs’ requested injunction  
 16 differs from the injunction stayed in *Dep’t of Educ. v. California*, 145 S. Ct. 966 (2025) (per  
 17 curiam). Nothing about the relief requested here requires Defendants to automatically disburse  
 18 funds or to abandon FHWA’s normal oversight role in the NEVI Formula Program. *See, e.g.*,  
 19 23 C.F.R. §§ 635.309, 680.106 (FHWA must ensure projects conform to minimum regulatory  
 20 standards, satisfy environmental review requirements, and have rights-of-way to build); O’Dea  
 21 Decl. ¶¶9-10 & Ex. 1 (explaining contents of a construction authorization request). The  
 22 injunction would only confine Defendants’ review to the normal technical, project-specific  
 23 considerations in statute and regulation.

24 **D. No Bond Requirement or Stay Should Issue**

25 The Court should waive a bond or require only a nominal amount. “Despite the  
 26 seemingly mandatory language, Rule 65(c) invests the district court with discretion as to the

1 amount of security required, if any.” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir.  
 2 2009) (cleaned up). In public interest environmental cases, “[c]ourts routinely impose either no  
 3 bond or a minimal bond” to avoid effective denial of access to judicial review. *City of South  
 4 Pasadena v. Slater*, 56 F.Supp.2d 1106, 1148 (C.D. Cal. 1999). Here, Defendants have  
 5 withheld and continue to withhold large sums of congressionally committed funds, and “there  
 6 is no realistic likelihood of harm to [them] from enjoining [their] conduct.” *Johnson*, 572 F.3d  
 7 at 1086. The requested injunction would serve only to require Defendants to adhere to the  
 8 formula fund process contemplated by Congress, while maintaining FHWA’s normal, proper  
 9 oversight role prior to any actual obligation or disbursement. *Rodriguez v. Robbins*, 715 F.3d  
 10 1127, 1145 (9th Cir. 2013) (federal government “cannot suffer harm from an injunction that  
 11 merely ends an unlawful practice”). Accordingly, this Court should waive a bond or require  
 12 only a nominal amount. Likewise, the Court should also deny Defendants’ cursory request to  
 13 stay the preliminary injunction because Defendants fail to address, and in any event would not  
 14 be able to meet, any of the stay factors.

15 **III. CONCLUSION**

16 Plaintiff States respectfully request that the Court grant their motion.

17 I certify that this memorandum contains  
 18 4153 words, in compliance with the Local  
 Civil Rules.

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